



TREC Advisor

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty, right-of-way services and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity across Texas.

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A DBA vs. an LLC or Other Business Entity

What's In a Name and Why Does It Matter?

Many license holders ask: what is the difference between using a DBA ("doing business as") or assumed name and using the name of business entity -- a limited liability company (LLC), a corporation, or a partnership?

A DBA is not a separate legal entity

The principal difference is that a DBA is NOT a legal entity; it is simply any name, including a team or group name, used in business by an individual broker or entity broker other than the name shown on the broker's license issued by the Commission. The DBA can be used in advertising in place of the broker's licensed name so long as it is properly registered with the Commission. (See §535.154 of the Commission Rules).

An LLC, a corporation, or a partnership is a separate legal entity

An LLC or a corporation, on the other hand, is an artificial person or a legal entity created under the authority of the laws of a state. The law treats the LLC or corporation itself as a person which can sue and be sued. The law also treats the LLC or corporation as a person and therefore the legal entity must hold its own Texas real estate broker license in order to engage in brokerage activities or to receive a commission or brokerage fees. The LLC or corporation is distinct from the individuals who own it, so even if a licensed sales agent or a broker owns the corporation, the owner and the corporation are two

distinct legal "persons" and the legal entity must hold a broker license under Section 1101.351(a-1) of the License Act.

Registering or filing with the Secretary of State is not a filing with TREC

On occasion, a license holder will attempt to use the name of an LLC or corporation as an additional DBA or assumed name of the broker and will submit a "Notice of DBA or Assumed Name" attempting to register that name with the Commission. The Commission, however, will reject such a form because an LLC or corporation cannot be a DBA of a broker. A legal entity must have its own broker's license and a license holder cannot register the name as a DBA to avoid this requirement. Some license holders who file for incorporation with the Secretary of State incorrectly assume that by filing for an assumed name certificate with the Secretary of State they also comply with the Commission's requirements.

If you have a separate legal entity that is engaging in real estate brokerage activities (like taking commission checks or advertising broker activities) – get a license

Brokerage activity by an unlicensed entity violates Section 1101.351(a-1) of the License Act. If you have questions on this subject, contact the Commission or your attorney. You can apply for a business entity broker license on our [website](#). TREC's DBA or assumed name [registration form](#).

From the Executive Director...

Fall is finally here and in Texas, that means FOOTBALL! Every football season brings out both the nostalgia and the rivalry. Each of us has favorite teams to root for and favorite memories of games past. Ask any fan and you will find out!

One of the finest traits of American civil society is our ability to passionately support and work for the preferred outcome of a contest, be frustrated when that outcome is not realized, and yet remain committed to stay "in the game" to pursue our aims yet again. Knowing that we are all better for having tested our goals against competing ideas, we accept setbacks as temporary and resolve to engage anew. We refuse to consider as enemies those who have the advantage in the moment, knowing roles may become reversed when circumstances change. And we believe all of us benefit from the exchanges because we do not doubt the underlying sincerity of motivation for those we may disagree with. Thus we build a path forward by including in our discussions as many voices as wish to engage in good faith. So it is in our families, associations, neighborhoods and communities. So may it also be in our politics.

Several TREC representatives attended the ARELLO annual meeting in Washington DC in September. I serve as 2015 Chair of the ARELLO Foundation and in addition to the business sessions, we conducted a fund-raising Silent Auction as part of the annual President's Gala. At that event I was also installed to serve on the 2016 ARELLO Board of Directors. Texas leads a balanced and effective regulatory policy, and also in the organization.

Starting on January 1, 2016, the Legal Update course that is a part of every license holder's continuing education (CE) requirement to renew a real estate license will be 8 hours and contain more information on the content and use of the agency's promulgated contracts. The statutory notices that

license holders are required to provide to clients and others – about the complaint filing process, the potential to access the recovery fund, and the Information About Brokerage Services (IABS) - will each be simplified and made more understandable, with updated rules on when and how the notices will be provided to consumers.



Douglas E. Oldmixon

January 1 will also see commencement of the requirement for instructors of "qualifying" and non-elective CE courses to provide proof of successful completion of a minimum of 8 hours of Instructor Training in Adult Education techniques in the last four years, such as TAR's ITI. Holding a current CREI, DREI or CDEI designation will also satisfy this requirement. This standard is critical to recognizing and maintaining the quality of the outstanding instructors who teach our most important professional courses. We appreciate those who commit to this level of expertise.

Working groups associated with the Commission have discussed and weighed ideas, comments and recommendations for updated policies, rules, forms and contracts for use in our professional practice. Many will be formally considered at the next Commission meeting on Monday November 2nd at 10 AM. We invite you to be there if you can or watch our live webcast at the TREC website www.trec.texas.gov if you cannot join us in person. Only by participating will your voice be one of those who contribute to the betterment

we pursue. We owe a debt of gratitude to those who make the time to contribute to the process of better service to Texans. Aim high!

IMPORTANT DATES TO REMEMBER

TREC Commission Meeting—Nov 2

ESAC Committee Meeting—January 11

Check the TREC website regularly for postings of all of our upcoming meetings.

What Do I Need to Know About Plugging An Abandoned Water Well?

Groundwater from aquifers supplies over half of the water used in the state. With water being one of our state's most precious natural resources, we must all take responsibility for protecting it.

For many years groundwater has been pumped through water wells. Over time, these wells can deteriorate or not be in use and therefore considered abandoned. It is estimated that 150,000 abandoned water wells exist in the state of Texas. These abandoned water wells are not only a route for possible contaminants to enter our groundwater supplies, but they are also a safety hazard to children and animals.

Contaminants that enter a well are introduced directly into the aquifer because they are not naturally filtered by soils or geologic materials. If a concentrated chemical enters a well, it may reach levels in the underlying aquifer that threaten human health. This puts other wells in the aquifer at risk, particularly those that are close to the abandoned well. If your well is a deteriorated well it must be properly abandoned and cannot be capped. A deteriorated well is a well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater. In certain cases the contaminated water can even migrate to other aquifers, putting additional water wells at risk.

According to Texas law, a water well is considered abandoned if it is not in use. However, a non-deteriorated well can be considered in use if it contains a casing, pump, and pump column in good condition or if it has been capped.

The landowner may plug any well located on their own property. If the well is not plugged by the landowner then it must be plugged by a licensed water well driller or pump installer. Before any work is done, the landowner is encouraged to contact the Water Well Drillers and Pump Installers Program of the Texas Department of Licensing and Regulation (TDLR) and get a [plugging method approved](#). Prior to plugging a well located on their property, the landowner should consult the [Landowner's Guide to Plugging Abandoned Water Wells](#). If the well does not fall within the requirements listed in RG-347, licensed water well drillers or licensed pump installers can legally plug the well.

If the well is within a Groundwater Conservation District (GCD or "district"), the landowner must notify

the district of their intention to plug the well, request the district's plugging application, and pay applicable fees if required.

Within 30 days after the well is plugged, a copy of the well-plugging form should be sent to the TDLR and the local GCD. The plugging report can be filed [online](#); however, the landowner will need to contact TDLR for a user ID and Password first.

The basic steps to plugging an abandoned well are:

- Determine the size of the well;
- Remove debris from the well;
- Disinfect the well to ensure that disease-causing microorganisms are not sealed in the aquifer;
- Remove all removable casing;
- Fill the well with plugging material; and,
- Complete and mail the state plugging form to the TDLR.

Some areas of Texas have assistance programs for plugging abandoned wells. The landowner may contact their local [GCD representative](#), as well as their [Texas State Soil and Water Conservation Board representative](#), to see if a program is available in their area. The Texas Groundwater Protection Committee (TGPC) has also created an online map of GCDs with available abandoned water well [Cost Share Plugging Programs](#) available.

Further information about plugging abandoned wells is available by contacting a Texas A&M [AgriLife Extension Service](#) agent, the local GCD, or the TDLR.

Note that:

- A seller must disclose whether there is a private/ domestic water well on the property and its condition (Tex. Property Code, Title 2, Chapter 5, Section 5.008); and,
- A real estate agent must ensure that known property defects are disclosed to a potential buyer (Tex. Occupations Code, Title 7, Chapter 1101, Section 1101.652(b)(3) and (4)).

For additional Frequently Asked Questions (FAQs) related to groundwater quantity, groundwater quality, septic systems, water wells, administrative entities, and publications, visit the TGPC's FAQ [webpage](#).

Education Related Changes May Effect Your License

A summary of the proposed rules and how they will affect [applicants and license holders](#) after January 1, 2016 can be found under the “Hot Topics” section of the TREC Home Page. Also under “Hot Topics” is a summary of the proposed rules that will affect [Qualifying and Non-elective CE](#) providers that was emailed to providers earlier this month.

TREC has received comments and feedback from stakeholders which the Education Standards Advisory Committee (ESAC) considered. ESAC will recommend some revisions to rule proposals to the Commission at their November 2nd meeting.

We want to remind you of some changes that were adopted at the August Commission meeting that **will** be effective January 1, 2016.

- The non-elective CE Legal Update and Ethics MCE courses (3 hours each) expire December 31, 2015 and will be replaced with Legal Update I and II (4 hours each) effective January 1.
- License holders that have not completed their required non-elective CE by this date must complete the new TREC Legal Update I and II courses before renewal.
- A list of providers who offer our current non-elective courses is provided on the TREC website. Providers who will be offering the new Legal Update I and II after January 1 will be listed on the website by late November.
- TREC instructors must attend an 8-hour adult education instructor training course within 4 years prior to approval or re-approval.
- Instructors who show proof of current CREI, DREI, or CDEI designations or who have completed the ITI program or any college adult education instructor training course within 4 years prior to approval or re-approval will satisfy the requirement.
- Instructors who apply for and obtain re-approval prior to January 1 (this includes instructors with January or February 2016 expiration dates) will not need to meet this requirement until their next renewal.
- Instructors without proof of a current designation or acceptable college adult education instructor training course or other course acceptable by the Commission can attend an 8 hour adult education instructor training course that has been approved by TREC. A list of these courses will be available at the TREC website by late November.

QUALIFYING PROVIDERS - FINAL REMINDER:

Over four years ago the Commission adopted §535.62(f)(2) of the Rules requiring that all Real Estate and Inspector qualifying (formerly known as “core”) courses approved prior to January 1, 2011 expire on December 31, 2015. Recall that these courses had no expiration dates. Some may no longer be offered and others may never have been updated. We’ve reminded and encouraged qualifying education providers who want to continue to offer these courses to file new course applications and fees early to allow ample time for review and approval in accordance with current standards. Approved courses will receive a four year term, subject to updates and revisions as set out in Commission rules. Remember, it is the providers’ responsibility to inform students enrolled in the current courses that they must complete them prior to December 31 for credit to be awarded. The deadline is drawing near, so education providers who have not already submitted them need to get these to us right away to ensure availability of these courses to students.

Proposed Rules

The following amendments or new rules were proposed at the August 17, 2015, meeting of the Commission and are up for adoption at the November 2, 2015 meeting. You can see the full text of these rules on the "Proposed Rules" section on our [website](#).

§531.18, Consumer Information (Brokers and Agents), §535.220, Professional Conduct and Ethics (Inspectors), and §535.401, Required Notices (ERW) The 84th Legislature authorized the Commission to adopt the form and delivery method for a consumer notice regarding complaints and recovery fund availability. The proposed revised form will be for mandatory use by license holders and will have to be linked to the homepage of a license holder's website.

§531.20, Information About Brokerage Services. The 84th Legislature authorized the Commission to adopt the form and delivery method for the Information about Brokerage Services notice. The proposed new form will be for mandatory use by license holders and will have to be linked to the homepage of a license holder's website.

§534.2, Processing Fees for Dishonored Payments. Proposed to update statutory numbering changes.

Chapter 535, General Provisions. Many amendments were proposed to align the rules with statutory changes in SB 699 enacted by the 84th Legislature including increasing non-elective CE course hours from 6-8, overall CE hours from 15 to 18 hours per renewal cycle, allowing CE credit for attendance at a February Commission meeting, and to require additional education after the third time an applicant fails the license examination; to clarify and improve performance and delivery standards for real estate and inspector education providers, courses and instructors; and to provide greater clarity in several rules providing for disciplinary action, including requirements for trust money and when a license holder is a party to a transaction. Redline copies of these proposals, along with a more detailed description of the changes can be found on our website.

Chapter 537, Professional Agreements and Standard Contracts. Broker-Lawyer Committee reviewed and made changes to the proposed contracts based on comments received. To see all proposed contract changes please go to the meeting materials on our [website](#).

Thanks For Your Feedback on the Proposed Contract Changes

Many comments regarding the proposed contract revisions were received by the Broker-Lawyer Committee and several key revisions were made based on the comments.

Chief among them was removal of the proposed automatic 10 day closing extension for the new integrated disclosures in Paragraph 9. Parties can address any such delays in the same manner as any other closing delays – by negotiating an amendment to the contract. The Third Party Financing Addendum was also revised for greater

clarity and to include the parties' authorization to lenders and title companies to release the closing disclosure to the parties' respective agents. Finally, by popular demand, the order of the information blocks for the Associate and the Associate's Supervisor were reversed.

These and several other revisions will be in the contract forms up for adoption by the Commission at the November 2, 2015 meeting. You can review copies on the meetings page of our website under "materials."

TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions. To read the full report and get access to all of the enforcement actions taken by the Commission, please go to the TREC website and click on, "Complaints, and Consumer Info" and then [click "Disciplinary Actions"](#).

TREC Employee Update



Keith Elveston

Information and Technology Services

Keith Elveston joined TREC's ITS department as a Quality Assurance Engineer on September 14th, 2015. He has worked in the computer manufacturing industry for over 15 years at companies like Compaq, Hewlett Packard and Dell in various roles such as Quality Assurance, Software Development and Lab Administration. Born in Houston but raised in Louisiana from 2 weeks old, Keith repatriated to Texas (Houston) in 1998 and moved to Round Rock in 2004 to work in Dell's Enterprise Product Group, assisting in the development of prototype servers, storage and networking hardware. He has a bachelor's in Advanced Computer Animation and Modeling from Sam Houston State University.



Erin Colby

Education and Licensing Services

Erin joined TREC in October 2015 as an Education Specialist in the Education & Licensing Services Division. Erin previously worked as an Enrollment and Completion Advisor at National American University. Erin moved from Kansas to Austin in 2011 and loves everything the city has to offer. Erin earned a Bachelor of Science in Elementary Education and a Masters of Library and Information Science from Emporia State University in Emporia, Kansas. Erin is very excited to be a part of the TREC team!